

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

JAMES COOPER,	)	
	)	
Petitioner,	)	
v.	)	Civil Action
	)	No. 05-3129-CV-S-RED
ROBERT McFADDEN, Warden,	)	
	)	
Respondent.	)	

**ORDER AND JUDGMENT**

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert that the Court possesses jurisdiction under 28 U.S.C. § 2241 to determine the legality of his current confinement. In support thereof, he asserts that law enforcement violated his Fourth Amendment rights and that the evidence obtained as a result should have been suppressed. It is also his contention that his counsel was ineffective.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Regardless of petitioner's assertions, it is clear that he is challenging the sentence imposed. He has failed to

demonstrate that 28 U.S.C. §2255 is an ineffective or inadequate vehicle to test the legality of that sentence. Accordingly, the Court finds that the conclusion of the Magistrate should be approved.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr  
Richard E. Dorr  
United States District Judge

Date: April 24, 2006